

Baker Hostetler

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

1 2006 AUG 23 P 3:10

Baker & Hostetler LLP

Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5304

T 202 861 1500
F 202 861 1783
www.bakerlaw.com

August 23, 2006

Federal Election Commission
Office of the General Counsel
999 E Street, N.W.
Washington, DC 20463
Attn: Tracey L. Ligon

E. Mark Braden
direct dial: 202 861.1504
mbraden@bakerlaw.com

Re: MUR – 5742 - Bill McCollum for U.S. Senate and Richard L. Pilhorn in his capacity as Treasurer.

Dear Ms. Ligon:

This letter is to advise the Commission as to the facts and circumstances surrounding the original filing of the 12-Day Pre-Primary Report in 2004 for the Bill McCollum for U.S. Senate Committee ("Committee"). This letter is accompanied by affidavits from Richard Pilhorn and Melanie Boscan.

Richard Pilhorn is Certified Public Accountant with the firm of Osburn Henning & Company in Orlando. He was the treasurer of the McCollum senate campaign. The campaign office manager was Melanie Boscan. Throughout the 2004 Senate race, Ms. Boscan maintained all of the financial records for the campaign and prepared all the reports for Mr. Pilhorn's review and filing. They worked closely with the campaign finance director, Mike Miller. The campaign manager was Matt Williams. The campaign office was maintained at 605 East Robinson Street, Suite 240, Orlando, Florida 32801. It was in this location that all of the campaign computers were housed. All the records were maintained on these computers. Melanie Boscan, Mike Miller and Matt Williams worked at this location.

The software program used for this campaign was Aristotle's CM4. The campaign maintained three accounts with SunTrust Bank: (1) a checking account into which contribution checks were deposited and from which routine disbursements were made; (2) a money market account into which larger sums were transferred periodically from the checking account to earn interest while waiting for the campaign to reach the point of purchasing advertising and from which monies were wire transferred for television and radio purchases; and (3) a savings account where contributions attributed to the general election were segregated.

By Ms. Boscan or under her supervision, data was routinely entered into CM4 from checks received before they were deposited into the checking account. The CM4 and all data were maintained on a server located in the campaign office. Separately, Ms. Boscan recorded disbursements on a Quicken system on her own computer in its hardware system at her desk in this office. Checks were written using the Quicken software which automatically maintained the record of those disbursements. Ms. Boscan separately entered into the Quicken system wire transfer data when large media purchases were made by the campaign. McLaughlin and Associates made the media buys and notified the campaign of the need for transferring money into their accounts to cover those purchases. Pilhorn would authorize the wire transfer from the money market account at the bank and Ms. Boscan would enter the data from e-mail traffic into the Quicken system. As the time for filing each FEC report approached, Ms. Boscan would take the disbursements data from the Quicken system and enter the data into CM4.

The pre-primary election report for the period ending August 11, 2004, was due to be filed no later than August 19, 2004, with the Secretary of the Senate. The report had to be mailed no later than August 16, 2004.

On Friday, August 13, 2004, with Hurricane Charley rapidly approaching Orlando, the Mayor ordered everyone in the city to leave work by 1:00 p.m. and go home. This was mandatory. Coming ashore at Punta Gorda, Charley ripped through the middle of the state and hit Orlando hard, downing many trees, doing enormous damage and cutting off electricity in some areas for many days. Ms. Boscan had planned to work over the weekend the storm hit to take the disbursements data from the Quicken system and enter it into CM4 and do the final preparations and reconciliation of the 12 day pre-primary report to get it to Treasurer Pilhorn on Monday, August 16, for mailing to the Secretary of the Senate. When Charley hit she could not do this task. A tree struck the office building where the campaign headquarters was located, doing extensive damage. The landlord allowed no one in the building for several days after the storm struck, and there was no electricity in the building through Saturday, August 21st.

On Monday, August 16, campaign staff gathered in a conference room at a law firm office which was located in one of the few buildings in Orlando that maintained electricity. Ms. Boscan tried to reach FEC campaign finance analyst Jill Sugarman on the phone to discuss the quandary of what to do about filing the pre-primary report, but Ms. Sugarman was not in the FEC office that day. Instead, Ms. Boscan spoke with someone else whose name she does not recall who told her that the law provided no exceptions for acts of God, and if the campaign wanted to avoid the penalty for late filing, it needed to file something, even if it was incomplete and had to be amended later. Mr. Miller could not believe that there was no provision for delayed reporting due to an act of God and called the Secretary of the Senate's office where he was told the same thing. Not surprisingly, he was frustrated to find

28044184438

no alternative to a risky visit to a storm-damaged office. Mr. Miller located the campaign office building manager, Don Shenoy, and talked him into letting him into the damaged, darkened building long enough to retrieve the server with the CM4 data.

This server was brought to the law office where Mr. Miller, with the assistance of a young staffer who did most of the campaign computer work, Brian Williams, attempted to get the server working to produce a report with the data on it.

It is unclear now whether the incorrect report that the Treasurer signed that day was printed by the server or was a preliminary working copy which had been produced for Ms. Boscan's in-house use before the storm struck on the 13th. Mr. Miller does not believe they ever successfully got the server working and thought Ms. Boscan had a working draft copy that eventually was used. Ms. Boscan has no recollection of whether the server was ever successfully hooked up. She does not remember the source of the print-out signed by the Treasurer that day. Since these events occurred two years ago, it is not surprising that the exact details are unclear.

The pre-primary report was sent by Federal Express to the Secretary of the Senate late on August 16th. The only data submitted in this report was that which had already been entered into CM4 prior to the office being vacated at 1:00 p.m. on August 13th. It is now clear that this did not include any of the disbursements data from the Quicken system that Ms. Boscan had planned to enter into CM4 over the hurricane weekend.

During the balance of that week the campaign operated as best it could out of a conference room in an apartment building nearby which had electricity. Like many organizations and businesses in Orlando, the campaign had no functioning office during that period. With the exception of Mr. Miller and the staffer who assisted him in retrieving the server on Monday, August 16th, no one could reenter the campaign offices until the following weekend when the electricity was restored. The building was finally reopen for business the following Monday, August 23rd.

At that point the campaign entered the final week before the August 31 primary. Ms. Boscan focused on the huge number of contribution checks coming in and compliance with the 48 hour notices that had begun August 12th, the day before Charley struck. Neither the Treasurer nor Ms. Boscan understood the extent of missing disbursement data from the Quicken system not entered into CM4, nor did they understand that there was any requirement to prepare an amended 12-day pre-primary report before the election. No one within the campaign understood the size of the error.

28044184439

After the primary most of the campaign staff immediately went off payroll and sought jobs elsewhere. Ms. Boscan stayed on to do the cleanup work with the Treasurer and was helped by Mr. Miller. Their immediate attention was focused on handling the significant amount of money in the separate savings account that had been set up for contributions attributed to the general election. In many cases monies had to be returned very quickly. While this activity was going on, Orlando was struck by two more hurricanes. The first was Frances on September 5th and then Ivan on September 25th. Neither was as bad as Hurricane Charley, but both caused electrical outages for extended periods of time. Consequently, the amended pre-primary reflecting the disbursements that were omitted on August 16th was not submitted until October 15th contemporaneous with the submission of the post election report.

The reporting error appears to involve only seven entries. All but a small fraction of the \$755,839.00 cited by the FEC as not being disclosed as disbursements in the original 2004 12-day pre-primary report were wire transferred to McLaughlin and Associates for media buys that were originally entered on the Quicken system but not in CM4. A review of the records reveals that the balance were checks written using the Quicken system that also had not been entered on CM4 at the time Hurricane Charley hit on August 13th.

In a letter dated March 15, 2005, Ms. Sugarman requested that the Treasurer send a written response or an amendment to the original 12-day pre-primary report, explaining the substantial increase in the amount of disbursements in the amended report. In a letter dated April 12, 2005, the Treasurer responded that the campaign office was damaged and was without electricity, so the campaign had no way to file a complete report. Ms. Sugarman called on May 4, 2005 regarding this letter and wanted further clarification, which was sent in a May 10, 2005 letter. Also sent was a letter signed by Don Shenoy, the manager of the building in which the campaign headquarters was located, explaining that the building had been shut down by Hurricane Charley. Copies of all four letters accompany that response.

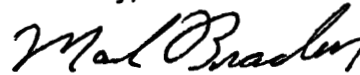
On July 19, 2005, Mr. McCollum notified the FEC that he did not intend to be a candidate for the United States Senate from Florida or seek any other federal office in the 2006 elections. Mr. McCollum had instructed the Treasurer to begin the process of closing down the Bill McCollum for U.S. Senate campaign. On April 11, 2006, the Treasurer sent a letter to the FEC with a "Termination Report." On that date, neither the candidate, Treasurer nor anyone associated with the campaign had any idea there were any remaining issues with the Commission.

McCollum for Senate Committee and its Treasurer are prepared to execute a pre-probable cause conciliation agreement with the Commission regarding the errors contained in the initial pre-primary election filing.

2804418440

If you have any additional questions, please do not hesitate to contact me.

Sincerely,



E. Mark Braden

Enclosures

28044184441

FEDERAL ELECTION COMMISSION
MUR 5742

AFFIDAVIT OF RICHARD L. PILHORN

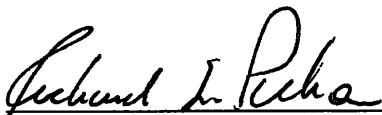
- 1) I, Richard Pilhorn, am a Certified Public Accountant with the firm of Osburn Henning & Company in Orlando, and was the treasurer of the McCollum senate campaign ("campaign.") The campaign office manager was Melanie Boscan. Throughout the 2004 Senate race, she maintained all of the financial records for the campaign and prepared all the reports for my review and filing.
- 2) The campaign office was maintained at 605 East Robinson Street, Suite 240, Orlando, Florida 32801. It was in this location that all of the campaign computers were housed. All the records were maintained on these computers.
- 3) The campaign software program used for this campaign was Aristotle's CM4. The campaign maintained three bank accounts with SunTrust: (1) a checking account into which checks were deposited and from which routine disbursements were made; (2) a money market account into which larger sums were transferred periodically from the checking account to earn interest while waiting for the campaign to reach the point of purchasing advertising and from which monies were wire transferred for television and radio purchases; and (3) a savings account where contributions attributed to the general election were segregated.
- 4) By Ms. Boscan or under her supervision, data was routinely entered into CM4 from checks received before they were deposited into the checking account. The CM4 and all data were maintained on a server located in the campaign office. Separately, Ms. Boscan recorded disbursements on a Quicken system on her own computer in its hardware system at her desk in this office. Checks were written using the Quicken software which automatically maintained the record of those disbursements. Ms. Boscan separately entered into the Quicken system wire transfer data when large media purchases were made by the campaign.
- 5) McLaughlin and Associates made the media buys and notified the campaign of the need for transferring money into their accounts to cover those purchases. I would authorize the wire transfer from the money market account at the bank and Ms. Boscan would enter the data from e-mail traffic into the Quicken system. As the time for filing each FEC report approached, Ms. Boscan would take the disbursements data from the Quicken system and enter the data into CM4.
- 6) The pre-primary election report for the period ending August 11, 2004, was due to be filed no later than August 19, 2004, with the Secretary of the Senate. The report had to be mailed no later than August 16, 2004.

28044184442

- 2804418443
- 7) On Friday, August 13, 2004, with hurricane Charley rapidly approaching, the Orlando Mayor ordered all offices in the city closed by 1:00 p.m. This was mandatory. Hurricane Charley hit Orlando hard, downing many trees, doing enormous damage and cutting off electricity in some areas for many days. A tree struck the office building where the campaign headquarters was located, doing extensive damage. The landlord allowed no one in the building for several days after the storm struck, and there was no electricity in the building through Saturday, August 21st.
 - 8) I understood that Ms. Boscan had planned to work over the weekend the storm hit to reconcile the disbursements data from the Quicken system and CM4 and do the final preparations and reconciliation of the 12 day pre-primary report to get it to me on Monday, August 16, for mailing to the Secretary of the Senate. When Charley hit, she could not do this task.
 - 9) On Monday, August 16, campaign staff gathered in a conference room at a law firm office which was located in one of the few buildings in Orlando that maintained electricity. Ms. Boscan tried to reach FEC campaign finance analyst Jill Sugarman on the phone to discuss the quandary of what to do about filing the pre-primary report, but Ms. Sugarman was not in the FEC office that day. Instead, Ms. Boscan spoke with someone else whose name she does not recall who told her that the Act provided no exceptions for acts of God, and if the campaign wanted to avoid the penalty for late filing, it needed to file something, even if it was incomplete and had to be amended later. The campaign finance director called the Secretary of the Senate's office where he was told the same thing. With no apparent alternative to a risky visit to a storm-damaged office, Mr. Miller located the campaign office building manager, Don Shenoy, and talked him into letting him into the damaged, darkened building long enough to retrieve the server with the CM4 data.
 - 10) This server was brought to the law office where Mr. Miller, with the assistance of Brian Williams, a young staffer who did most of the campaign computer work, attempted to get the server working to produce a report with the data on it.
 - 11) It is unclear now whether the report I signed that day was printed by the server or was a preliminary working copy which had been produced for Ms. Boscan's in-house use before the storm struck on the 13th. I do not know whether the server ever worked. I do not remember the source of the print-out signed by me that day.
 - 12) The pre-primary report was sent by Federal Express to the Secretary of the Senate late on August 16th. The only data submitted in this report was that which had already been entered into CM4 prior to the office being vacated at 1:00 p.m. on August 13th. It is now clear that this did not include all of the disbursements data from the Quicken system that Ms. Boscan had planned to enter into CM4 over the hurricane weekend.

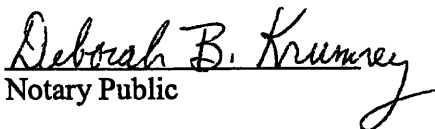
- 2804418444
- 13) During the balance of that week the campaign operated as best it could out of a conference room in an apartment building nearby which had electricity. Like many organizations and businesses in Orlando, the campaign had no functioning office during that period. With the exception of Mr. Miller and the staffer who assisted him in retrieving the server on Monday, August 16th, no one could reenter the campaign offices until the following weekend when the electricity was restored. The building was finally open for business the following Monday, August 23rd.
 - 14) At that point the campaign entered the final week before the August 31 primary. Ms. Boscan focused on the huge number of contribution checks coming in and compliance with the 48 hour notices that had begun August 12th, the day before Charley struck. Neither I nor Ms. Boscan understood the extent of missing disbursement data from the Quicken system not entered into CM4, nor did we understand that there was any requirement to prepare an amended 12-day pre-primary report before the election. No one within the campaign understood the size of the error.
 - 15) After the primary most of the campaign staff immediately went off payroll and sought jobs elsewhere. Ms. Boscan stayed on to do the cleanup work with me and was helped by Mr. Miller. The immediate attention was focused on handling the sizeable amount of money in the separate savings account that had been set up for contributions attributed to the general election. In many cases monies had to be returned in short order. While all of this was going on, Orlando was struck by two more hurricanes. The first was Frances on September 5th and then Ivan on September 25th. Neither was as bad as Charley, but both caused electrical outages for extended periods of time. Consequently, the amended pre-primary reflecting the disbursements that were omitted on August 16th was not submitted until October 15th contemporaneous with the submission of the post election report.
 - 16) The reporting error appears to involve only seven entries. All but a small fraction of the \$755,839.00 cited by the FEC as not being disclosed as disbursements in the original 2004 12-day pre-primary report were wire transferred to McLaughlin and Associates for media buys that were originally entered on the Quicken system but not in CM4. A review of the records reveals that the balance were checks written using the Quicken system that also had not been entered on CM4 at the time Hurricane Charley hit on August 13th.
 - 17) In a letter dated March 15, 2005, Ms. Sugarman requested that I send a written response or an amendment to the original 12-day pre-primary report, explaining the substantial increase in the amount of disbursements in the amended report. I responded in a letter dated April 12, 2005, that the campaign office was damaged and was without electricity, so the campaign had no way to file a complete report. Ms. Sugarman called on May 4, 2005 regarding this and wanted further clarification, which was sent in a May 10 letter. Also sent was a letter signed by Don Shenoy, the manager of the building in which the campaign headquarters was located, explaining that the building had been shut down by Hurricane Charley.

- 18) On July 19, 2005, Mr. McCollum notified the FEC that he did not intend to be a candidate for the United States Senate from Florida or seek any other federal office in the 2006 elections. Mr. McCollum had instructed me to begin the process of closing down the Bill McCollum for U.S. Senate campaign. On April 11, 2006, I sent a letter to the FEC with a "Termination Report." On that date, neither the candidate, I, nor anyone associated with the campaign, had any idea there were any remaining issues with the Commission.


Richard L. Pilhorn

SUBSCRIBED AND SWORN TO BEFORE ME

This 22nd day of August, 2006


Notary Public

My Commission Expires: _____



Deborah B Krumrey
My Commission DD346813
Expires September 16, 2008

28044184445

FEDERAL ELECTION COMMISSION
MUR 5742

AFFIDAVIT OF MELANIE S. BOSCAN

- 2804418446
- 1) I was the Office Manager of the McCollum Senate Campaign. Beginning in May 2004, and for the remainder of the 2004 Senate race, I maintained all of the financial records for the campaign and prepared all the reports for the Treasurer's review and filing. I worked closely with the campaign finance director, Mike Miller. The campaign manager was Matt Williams. The campaign office was maintained at 605 East Robinson Street, Suite 240, Orlando, Florida 32801. It was in this location that all of the campaign computers were housed. All the records were maintained on these computers.
 - 2) The campaign software program used for this campaign was Aristotle's CM4. The campaign maintained three bank accounts with SunTrust: (1) a checking account into which checks were deposited and from which routine disbursements were made; (2) a money market account into which larger sums were transferred periodically from the checking account to earn interest while waiting for the campaign to reach the point of purchasing advertising and from which monies were wire transferred for television and radio purchases; and (3) a savings account where contributions attributed to the general election were segregated.
 - 3) Data was routinely entered into CM4 from checks received before they were deposited into the checking account. The CM4 and all data were maintained on a server located in the campaign office. Separately, I recorded disbursements on a Quicken system on my own computer in its hardware system at my desk in this office. Checks were written using the Quicken software which automatically maintained the record of those disbursements. I separately entered into the Quicken system wire transfer data when large media purchases were made by the campaign. McLaughlin and Associates made the media buys and notified the campaign of the need for transferring money into their accounts to cover those purchases. The Treasurer, Mr. Pilhorn would authorize the wire transfer from the money market account at the bank and I would enter the data from e-mail traffic into the Quicken system. As the time for filing each FEC report approached, I would take the disbursements data from the Quicken system and enter the data into CM4.
 - 4) The pre-primary election report for the period ending August 11, 2004, was to be filed no later than August 19, 2004, with the Secretary of the Senate. The report had to be mailed no later than August 16, 2004.

2804418447

5) On Friday, August 13, 2004, with hurricane Charley rapidly approaching Orlando, the Mayor ordered everyone in the city to leave work by 1:00 p.m. and go home. This was mandatory. I had planned to work over the weekend the storm hit to take any disbursements data from the Quicken system which had not previously been entered into CM4 and enter it into CM4 and do the final preparations and reconciliation of the 12 day pre-primary report to get it to Treasurer Pilhorn on Monday, August 16, for mailing to the Secretary of the Senate. When Charley hit, I could not do this task. A tree struck the office building where the campaign headquarters was located, doing extensive damage. The landlord allowed no one in the building for several days after the storm struck, and there was no electricity in the building through Saturday, August 21st.

6) On Monday, August 16, I gathered with other campaign staff in a conference room at a law firm office which was located in one of the few buildings in Orlando that maintained electricity. I tried to reach our FEC analyst Jill Sugarman on the phone to discuss the quandary of what to do about filing the pre-primary report, but Ms. Sugarman was not in the FEC office that day. Instead, I spoke with someone else whose name I cannot now recall who told me that the Act provided no exceptions for acts of God, and if the campaign wanted to avoid the penalty for late filing, it needed to file something, even if it was incomplete and had to be amended later. Mr. Miller could not believe that there was no provision for delayed reporting due to an act of God and called the Secretary of the Senate's office where he was told the same thing. Not surprisingly, he was frustrated to find no alternative to a risky visit to a storm-damaged office. Mr. Miller located the campaign office building manager, Don Shenoy, and talked him into letting him into the damaged, darkened building long enough to retrieve the server with the CM4 data.

7) This server was brought to the law office where Mr. Miller, with the assistance of Brian Williams, a young staffer who did most of the campaign computer work, and I attempted to get the server working to produce a report with the data on it.

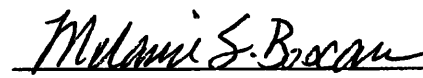
8) It is unclear to me now whether the report that the Treasurer signed that day was printed by the server or was a preliminary working copy which had been produced for my in-house use before the storm struck on the 13th. I do not remember that Mr. Miller ever successfully got the server working. I think my earlier working draft copy was eventually used.

9) The pre-primary report was sent by Federal Express to the Secretary of the Senate late on August 16th. The only data submitted in this report was that which had already been entered into CM4 prior to the office being vacated at 1:00 p.m. on August 13th. It is now clear that this did not include all of the disbursements data from the Quicken system.

10) During the balance of that week the campaign operated as best it could out of a conference room in an apartment building nearby which had electricity. Like many organizations and businesses in Orlando, the campaign had no functioning office during

that period. With the exception of Mr. Miller and the staffer who assisted him in retrieving the server on Monday, August 16th, no one could reenter the campaign offices until the following weekend when the electricity was restored. The building was finally open for business the following Monday, August 23rd.

- 11) At that point the campaign entered the final week before the August 31 primary. I focused on the huge number of contribution checks coming in and compliance with the 48 hour notices that had begun August 12th, the day before Charley struck. Neither the Treasurer nor I understood the extent of missing disbursement data from the Quicken system not entered into CM4, nor did we understand that there was any requirement to prepare an amended 12-day pre-primary report before the election.
- 12) After the primary most of the campaign staff immediately went off payroll and sought jobs elsewhere. I stayed on to do the cleanup work with the Treasurer and was helped by Mr. Miller. Our immediate attention was focused on handling the sizeable amount of money in the separate savings account that had been set up for contributions attributed to the general election. In many cases monies had to be returned in short order. While all of this was going on, Orlando was struck by two more hurricanes. The first was Frances on September 5th and then Ivan on September 25th. Neither was as bad as Charley, but both caused electrical outages for extended periods of time. Consequently, the amended pre-primary reflecting the disbursements that were omitted on August 16th was not submitted until October 15th contemporaneous with the submission of the post election report.
- 13) The reporting error appears to involve only seven entries. All but a small fraction of the \$755,839.00 cited by the FEC as not being disclosed as disbursements in the original 2004 12-day pre-primary report were wire transferred to McLaughlin and Associates for media buys that were originally entered on the Quicken system but not in CM4. A review of the records reveals that the balance were checks written using the Quicken system that also had not been entered on CM4 at the time Hurricane Charley hit on August 13th.


Melanie S. Boscan

SUBSCRIBED AND SWORN TO BEFORE ME
This 22nd day of August, 2006


Notary Public

My Commission Expires

